

# SENATE RECORD VOTE ANALYSIS

105th Congress  
2nd Session

Vote No. 160

June 16, 1998, 2:32 p.m.  
Page S-6381 Temp. Record

## TOBACCO BILL/Sliding Scale Limit on Attorney Fees

**SUBJECT:** National Tobacco Policy and Youth Smoking Reduction Act . . . S. 1415. Gorton modified amendment No. 2705 to the Daschle (for Durbin) amendment No. 2437, as amended, to the instructions (Gramm amendment No. 2436) to the Gramm motion to recommit the Commerce Committee modified substitute amendment No. 2420.

### ACTION: AMENDMENT AGREED TO, 49-48

**SYNOPSIS:** The "Commerce-2" committee substitute amendment (see NOTE in vote No. 142) to S. 1415, the National Tobacco Policy and Youth Smoking Reduction Act, will raise up to \$265.0 billion over 10 years and up to \$885.6 billion over 25 years from tobacco company "payments" (assessments) and from "look-back" penalties that will be imposed on tobacco companies if they fail to reduce underage use of tobacco products. Most of the money will come from the required payments (\$755.67 billion over 25 years). Additional sums will be raised from other fines and penalties on tobacco companies, and the required payments will be higher if volume reduction targets on tobacco use are not met. The tobacco companies will be required to pass on the entire cost of the payments to their consumers, who are primarily low-income Americans. By Joint Tax Committee (JTC) estimates, the price of a pack of cigarettes that costs \$1.98 now will rise to \$4.84 by 2007. The amendment will require the "net" amount raised, as estimated by the Treasury Department, to be placed in a new tobacco trust fund. (The net amount will be equal to the total amount collected minus any reductions in other Federal revenue collections that will occur as a result of increasing tobacco prices. For instance, income tax collections will decline because there will be less taxable income in the economy). The JTC estimates that the amendment will raise up to \$232.4 billion over 9 years, but only \$131.8 billion net. Extending the JTC's assumptions through 25 years, a total of \$514.2 billion net will be collected. The amendment will require all of that money to be spent; 56 percent of it will be direct (mandatory) spending. The Federal Government will give States 40 percent of the funds and will spend 60 percent. Medicare will not get any of the funding in the first 10 years unless actual revenues are higher than estimated in this amendment (in contrast, the Senate-passed budget resolution required any Federal share of funds from tobacco legislation

(See other side)

YEAS (49)			NAYS (48)			NOT VOTING (1)	
Republicans (45 or 85%)		Democrats (4 or 9%)	Republicans (8 or 15%)		Democrats (40 or 91%)	Republicans (1)	Democrats (0)
Abraham	Hutchinson	Byrd	Bennett	Akaka	Kennedy	Specter- <sup>3</sup>	
Allard	Hutchison	Dodd	Cochran	Baucus	Kerrey		
Ashcroft	Inhofe	Dorgan	D'Amato	Biden	Kerry		
Bond	Kempthorne	Lieberman	DeWine	Bingaman	Kohl		
Brownback	Kyl		Hatch	Breaux	Landrieu		
Burns	Lugar		Jeffords	Bryan	Lautenberg		
Campbell	Mack		Roth	Bumpers	Leahy		
Chafee	McCain		Shelby	Cleland	Levin		
Coats	McConnell			Conrad	Mikulski		
Collins	Murkowski			Daschle	Moseley-Braun		
Coverdell	Nickles			Durbin	Moynihan		
Craig	Roberts			Feingold	Murray		
Domenici	Santorum			Feinstein	Reed		
Enzi	Sessions			Ford	Reid		
Faircloth	Smith, Bob			Glenn	Robb		
Frist	Smith, Gordon			Graham	Rockefeller		
Gorton	Snowe			Harkin	Sarbanes		
Gramm	Stevens			Hollings	Torricelli		
Grams	Thomas			Inouye	Wellstone		
Grassley	Thompson			Johnson	Wyden		
Gregg	Thurmond						
Hagel	Warner						
Helms							

#### VOTING PRESENT (2)

Lott Boxer

#### EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

#### SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

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to be used to strengthen Medicare; see vote No. 84).

The Gramm motion to recommit with instructions would direct the Commerce Committee to report the bill back with the inclusion of the amendments already agreed to and the Gramm amendment No. 2437. The Gramm amendment would adopt the Gregg/Leahy amendment (see NOTE below) and would eliminate the marriage penalty in the tax code on couples earning less than \$50,000 per year. The tax relief would be structured so that married couples that received it would not consequently lose Earned Income Credit (EIC) eligibility.

The Durbin amendment, as amended, would cap the look-back penalties at \$7.7 billion annually and would shift the burden of those penalties on to those companies that have brands that do not meet the youth smoking reduction targets (see vote No. 149 for details). As amended by a Craig/Coverdell amendment, it would also fund anti-drug programs (see vote No. 151). As amended by a Gramm modified amendment, it would phase-in marriage-penalty relief over 10 years for married tax filers with incomes under \$50,000, and it would provide immediate 100 percent deductibility of health care costs for self-employed taxpayers (see vote No. 154). As amended by a Kerry amendment, it would require States to spend a quarter of their funding ~~from this bill on~~ Child Care Development Block Grants (see vote No. 157). As amended by a Reed amendment, a tobacco company that violated certain FDA rean

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more. That money will come right out of the tobacco settlement money being given to States for Medicare, which primarily provides health care to frail elderly patients of modest means. Most of those Senators who opposed those earlier amendments oppose this amendment as well, though they obviously are becoming uncomfortable with that position because their argument now is that the Gorton amendment would result in lawyers being paid too much. With all due respect, their argument is not rational. They say we should not suggest a \$4,000 cap for the lawyers who have done the most work, because judges will then automatically go to that level. They say if we did not suggest that cap, judges would favor less pay. However, they are well aware that a district judge in Texas has already supported an hourly wage equivalent of more than \$40,000 for the lawyers hired for that State's tobacco suit. Our colleagues' alternative is no cap at all. Further, if their concern was really that \$4,000 is too much for a cap, then they should have voted for the \$250 or \$1,000 caps. The reality is that there is no magic number between \$1,000 and \$4,000 that some of our more liberal colleagues will support. The reality is that they will not vote for anything that may cut the pay that trial lawyers will receive, however little work those lawyers did, however high that pay may be, and however much it takes away from settlement money that should be going to Medicare.

Our hope is that with this amendment we have found compromise ground. The Gorton amendment would recognize the extremely able work by the lawyers who were involved in the tobacco suits early on, and it would allow them to be paid very generously. Lawyers who filed suit later, and did very little work, would receive much less. This amendment is fair, and deserves our support.

**Argument 2:**

What is a fair price to pay lawyers out of tobacco settlement money that is supposed to be used for Medicare? Should they get \$250 per hour for work they did on lawsuits that will be settled by this legislation? Our colleagues said that was not enough. How about \$1,000 per hour? Our colleagues rejected that huge hourly cap as well. Now we are asking them to limit fees to "only" \$4,000 per hour. Many of our colleagues are again shamelessly saying that is not enough. We think that it was unethical for States to hire trial attorneys on a contingency-basis in the first place. Contingency fees should only be used when a client cannot otherwise afford representation, and every State can afford representation. In many cases, the lawyers who were hired for these tobacco suits were the close personal, or at least close political, friends of the State politicians who hired them. It is very difficult for us to vote for a \$4,000-per-hour pay "cap" for trial lawyers who were unethically hired to pursue these tobacco cases. Still, the alternative of letting them being paid \$90,000 per hour or more is much worse, so we will support this amendment.

**Those opposing the amendment contended:**

**Argument 1:**

If we adopt a \$4,000 per hour cap, judges will just ignore all of the listed criteria for deciding how much should be paid, and will instead assume that \$4,000 is a reasonable fee. Thus, instead of being a ceiling as our colleagues say they intend that figure to be, it will actually be a floor. We think \$4,000 per hour is too high. It is better not to enact any fee at all, and let the States decide this issue for themselves. If that course is followed, States will undoubtedly strike down these fee arrangements and come up with payment rates much lower than \$4,000. If Senators really want to limit exorbitant trial lawyer fees, they will oppose this amendment.

**Argument 2:**

We oppose this amendment for the same reasons that we opposed the earlier efforts to limit attorneys fees. As far as we are concerned, the lawyers involved have valid contracts, and they have earned every penny of the hundreds of millions or billions of dollars that they will be paid. Therefore, this amendment should be rejected.